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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/566,974

Applicant(s)

MCGILL, SHANE ROBERT

Examiner

Andrew Janca

Art Unit

1797

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25-58 and 71-73 is/are pending in the application.
- 4a) Of the above claim(s) 72 and 73 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 25-58 and 71 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Summary

1. This is the second non-final Office action based on the 10/566,974 application filed August 9, 2004.
2. Line numbers in US patents will be referred to by "xx:yy", where "xx" is the column number and "yy" are the line numbers. Paragraphs in published US applications will be referred to by "Pzz", where "zz" is the paragraph number.

Response to Amendment

3. The cancellation of claims 59-70 is noted.
4. The objection to the specification is withdrawn.
5. In light of the amendment to claim 47, the rejection under 35 U.S.C. 112 is withdrawn. However, a new rejection of claims 49-58 under the same statute has been made necessary by amendment (see below).

Terminal Disclaimer

6. The terminal disclaimer filed on January 5, 2009 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US patents 6,854,875, 7,168,845, 7,309,156, and 7,147,365, and any patent granted on Application Numbers 11/600,283 and 11/813,484 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Election/Restriction

7. Applicant's election with traverse of group I, claims 25-71 in the reply filed on January 5, 2009 is acknowledged. The traversal is on the ground(s) that the subject matter of both groups is sufficiently related that a thorough search of the subject matter of either group of claims would necessarily encompass a search for the subject matter of the remaining claims. This is not found persuasive because claims 72-73 reciting a method for charging and sealing a container, in particular the ring type clamping mechanism recited in claim 73, would require searching within the area of methods of sealing, outside and substantially distinct from the classes for mixing apparatuses appropriate to the invention of group I, claims 1-71. Since the two claimed inventions I and II lack unity of invention and would require undue burden of search for both together, the requirement is still deemed proper and is therefore made FINAL.

Response to Arguments

8. Applicant's arguments regarding the rejections of claims 42 and 71 (Remarks pp 14-15) under 35 USC 103 over US 2002/0127307 A1 by McGill in view of Sham have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, new grounds of rejection have been made (see below).

9. Applicant's arguments with respect to the rejections of claims 25, 27, 28, 31, 43, 44-46, and 48 under 35 USC 102 over McGill, and 35, 36, and 38-41 under 35 USC 103

over McGill have been considered but are moot in view of the new ground(s) of rejection.

10. Applicant's arguments with respect to claims 49, 51, 52, and 55-57 under 35 USC 102 over McGill, have been considered but are not persuasive: amended claim 49 does not recite the limitations discussed (Remarks pp 11-12).

11. Applicant's arguments with respect to the rejections of claims 25, 26, 28, 30, 32-34, 43, 44, 49, 50, and 54-58 over US 3,635,147 to Lee have been fully considered but are not persuasive. The amendments to the claims do not distinguish them over Lee. The limitation that the apparatus be used for blending rather than mixing of solid food as taught by Lee is a statement of intended use: if Lee's apparatus is capable of mixing noodles marinated in soy sauce without leaking, it is capable of blending liquids. The limitation that the blending means "be arranged for high speed rotation" does not recite any structure by which the apparatus claim may be limited. It is unclear what rotational speeds would be considered "high speed". It is also unclear what corresponding structural features "high speed" would require or preclude, and hence it cannot be said that Lee's stirring blades are structurally incapable of "high speed" blending. Lee's explicit teaching that his apparatus be used at "low speed" (1:45) does not exclude it from the scope of the claims for this reason, the structural indefiniteness of "high" or "low" speed. Further, even if this limitation were properly quantified, in the absence of corresponding structural features the *operation* of Lee's apparatus, as an intended use, would not distinguish the claims as currently phrased with their statements of intended use over it. The blades 35, 37 of Lee's apparatus (Lee figures 2 and 6) are clearly

capable of blending fluids at any speed. Whether or not the external drive means also taught by Lee is capable of driving the blades at any speed is irrelevant, since applicant's claims do not recite limitations on the drive means other than that they be external.

12. Applicant's arguments with regard to the rejections of claims 25, 26, 28, 32, 33, 43, and 45-47 under 35 USC 103 as obvious over US 6,363,837 to Sham et al have been fully considered, but are unpersuasive for similar reasons. Without limitations setting forth structure to correspond to "high speed" operation, the blending elements of Sham et al are still contained within the scope of the claims. The paddle may mix, and therefore blend liquids. Further, given that the common dictionary definition of the word "slot" may include "A narrow opening; a groove or slit," (American Heritage Dictionary of the English Language, 4th ed.) and the circular indentation 56 of Sham et al can certainly be called a groove and hence a slot, the independent claims as amended still include these elements of Sham et al within their scope. In particular, the amendment including an inner protrusion to the slot within the independent claims (leaving a limitation specifying also an outer protrusion to dependent claims 32-34) still does not distinguish over Sham et al, for their slot 56 includes such a protrusion (figure 4).

13. Applicant's arguments with regard to the rejections of claims 50, 52, 53, and 55-57 under 35 USC 103 as obvious over US 6,363,837 to Sham et al have been fully considered and are persuasive, since no rejection of claim 49 over Sham et al was made. The art elements of these claims are treated in the paragraph above. New

grounds of rejection are made of claim 49 over Sham et al to properly ground the rejections of the dependent claims above.

14. A rejection of claim 55 over McGill was indicated in the prior action, but omitted in error: it is included below.

Claim Rejections - 35 USC § 112

15. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

16. Claims 49-58 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 49 recites "...the container lid comprising a rim portion defining, wherein the lid includes...". It is unclear what the rim portion defines.

Claim Rejections - 35 USC § 102

17. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

18. Claims 1, 27, 28, 32, 33, 43, 44, 49, 51, 52, 56, and 57 are rejected under 35 U.S.C. 102(b) as being anticipated by US 6,071,006 to Hochstein et al.

19. With regard to claim 1, Hochstein et al teach a blending apparatus for a high speed blending operation comprising a container base 12 and a container lid 20, the container lid having mounted thereon blending means 26-38 arranged for a high speed rotation, the blending means extending through the lid and having, at one end, means 30 for connection to a drive motor external to the container and, at the other end, a blending element 38 for blending contents of the container when the drive means is operated, the blending means comprising a shaft portion 26 locatable through an opening in the lid and incorporating the connection means, and a blending element portion 38 associated with the shaft portion for rotation therewith, the container lid comprising a rim portion 22 defining a circumferential slot into which the top edge 18 of the container is located when the lid and container are assembled, a radially inner side of the slot extending along an inner wall of the container and in contact with or closely adjacent the inner wall when the lid and container are assembled, and wherein an outwardly convex portion 34-36 is formed on the lid within the rim portion, the convex portion including the opening into which the blending means is located (figures 1 and 2).

20. With regard to claim 49, Hochstein teaches a container lid 20 for mounting on an open ended beverage container 12, the container lid having located thereon blending means 26-38 for a high speed blending operation, the blending means extending through an opening in the lid and having, at one end, means 30 for connection to a drive motor external to the container and, at the other end, a blending element 38 for high speed blending of contents of the container when the drive means is operated, the container lid comprising a rim portion 22; wherein the lid includes an outwardly convex

portion 34-36 formed within the rim portion, the convex portion including the opening through which the blending means extends (figures 1 and 2).

21. With regard to claims 27 and 51, Hochstein et al teach that the outwardly convex portion 34-36 lies substantially level with the upper end of the container, when the lid is assembled on the open end of the container (figure 1).

22. With regard to claims 28 and 52, Hochstein et al teach that the outwardly convex portion 36-44 may alternatively project above the upper edge of the container, when the lid is assembled on the open end of the container (figure 3).

23. With regard to claim 32, Hochstein et al teach that the slot 22 is defined by an outer portion arranged to extend around the top edge 18 of the container, and an inner portion arranged to extend into the container in contact with or closely adjacent the inner wall of the container (figures 1 and 2).

24. With regard to claim 33, Hochstein et al teach that a curvilinear joint is provided between the inner and outer portions of the slot (figure 1; 3:13).

25. With regard to claims 43 and 56, Hochstein et al teach that the container lid includes a product access opening with closure means, the access opening being for accessing the contents of the container after blending (4:63-65). The opening possesses closure means, for it is made sealed closed during manufacture.

26. With regard to claims 44 and 57, Hochstein et al teach that the access opening is necessarily in the form of a radial opening: the opening must be radially displaced from the center of the lid, for the center of the lid is occupied by the stirring shaft 26-38 (figure 1).

27. Claims 49-52 and 55-57 are rejected under 35 U.S.C. 102(b) as being anticipated by US 2002/0127307 A1 by McGill.
28. With regard to claim 49, McGill teaches a container lid 2 for mounting on an open ended beverage container 3, having blending means for a high speed blending operation mounted thereon and extending through the lid, shaft 8 and impeller 1, with means to connect to an external drive motor through aperture 4E on one end, and a blending element at the other end (figure 1); the lid comprising a rim (figures 1-3); where an outwardly convex portion 4 is included on the lid within the rim portion (figures 1 and 2), which includes an opening through which the blending means extends (figures 1 and 2).
29. With regard to claim 50, McGill teaches that the outwardly convex portion is of a dome shape, in particular a curvilinear dome shape since it possesses circumferentially curved inner surfaces, being defined by surfaces of revolution; where the blending means 4E-4F is located centrally thereof (figures 1 and 2).
30. With regard to claims 51 and 52, McGill teaches an outwardly convex portion projecting above the upper end of the container as defined by the plane of the container's rim; and parallel to the same plane defined by the container's upper end, and hence level with it (figures 1 and 2).
31. With regard to claim 55, McGill teaches that the lid defines an internal region in which the blending means 4 operates (figures 2 and 3), said region having curved surfaces including the curved surface of pocket 14 and the curved circumferential

surface of blending element 4 and its support on the lid, since the elements shown in cross-section in figures 2 and 3 have rotational symmetry.

32. With regard to claims 56 and 57, McGill teaches a product access opening with closure means through which the contents of the container may be accessed after blending (straw 5 in figure 1 and P45; or alternatively, opening 12 and cover 16 in figure 3), radially disposed upon the lid from its center (figures 1 and 3).

33. Claims 25, 26, 28, 30, 32-34, 43, 44, 49, 50, 52, and 54-58 are rejected under 35 U.S.C. 102(b) as being anticipated by US 3,635,147 to Lee.

34. With regard to independent claim 25, Lee teaches a blending apparatus for a high speed blending operation comprising a container 20, a container base 10, and a container lid 30 (2:41); the latter having blending means 6 comprising a shaft 50a-51 extending through and descending centrally from the lid, and blending elements 35 and 37 (figure 2); means 30-66-67 for connecting to a drive motor (figure 3); where the shaft 50a-51 incorporates the connection means 30-66-67, since tubular member 51 is integral with the lid 30 which engages the external drive means through gears 66-67; the container lid comprising an outwardly convex portion 30 including the opening for the blending means, and defining an internal region where the blending means operates (figures 1, 2); and a rim with a circumferential slot into which the top end of the container is located when the container and lid are assembled, a radially inner side of the slot extending along an inner wall of the container and in contact with or closely adjacent to the inner wall when the lid and container are assembled (figure 5). Although Lee teaches use of his apparatus for interleaving and folding solid ingredients being

stirred rather than blending liquids (1:70-75), his apparatus is clearly capable of blending liquids. Although Lee teaches use of his apparatus for low speed blending (1:45), the speed at which his apparatus is operated does not distinguish structural features which are what are pertinent to an apparatus claim. Both the use of the apparatus for blending liquids and the speed at which it is to be operated are statements of intended use. It has been held that the manner of operating an apparatus does not differentiate an apparatus claim from the prior art, if the prior art apparatus teaches all of the structural limitations of the claim. See *Ex Parte Masham*, 2 USPQ2d 1647 (BPAI 1987).

35. With regard to independent claim 49, Lee teaches a container lid 30 for mounting on an open ended beverage container (2:41); having blending means 50a-51-37 for a high speed blending operation extending through an opening of the lid (figure 2), and comprising blending elements 35 and 37 (figure 2) for high speed blending of the contents of the container when the drive means is operated; means 30-66-67 for connecting to a drive motor (figure 3); the lid including an outwardly convex portion 30 including the opening for the blending means; and a rim portion (figure 5).

36. With regard to claims 26, 28, 30, 50, 52, 54, and 55, Lee teaches a transparent container lid 30 (2:41) of curvilinear dome shape and projecting above the upper end of the container (figure 2), comprising an outwardly convex portion 30 including the opening for the blending means and an access opening, and defining an internal region having curved surfaces where the blending means operates and is located centrally thereof (figures 1, 2).

37. With regard to claims 32-34, Lee teaches a rim with a circumferential slot into which the top end of the container is located (figure 5), defined by oppositely-directed circumferential portions, the outer and inner portions of rim 68, where the first (outer) portion extends around the top edge of the container, contacts the inner side wall of the container 25a, and extends into the container; and has a curvilinear (being circumferential in extent) join at the midpoint of arced container rim 25a to the second (inner) portion which extends from its contact point with the inner wall of the container, to in all about 2 times the distance the outer portion extends in all (figure 5).

38. With regard to claims 43, 44, 56, and 57, Lee teaches a product access opening, slideable lid 32 (3:59-63) radially displaced from its center of the container lid (figure 1).

39. With regard to claim 58, the rim of Lee's lid has axial slits around its circumference, to engage its blending means with gears 67 of the motor driveshaft 66 (figure 3).

Claim Rejections - 35 USC § 103

40. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

41. Claims 25, 27, 28, 31, 35, 36, 38-41, 43-46, and 48 are rejected under 35 U.S.C. 103(a) as being obvious over US 2002/0127307 A1 by McGill in view of US 6,071,006 to Hochstein et al.

42. With regard to independent claim 25, McGill teaches a blending apparatus comprising a container base 7, an open ended container for high speed blending and suitable for blending beverages 3, and a container lid 2 having blending means mounted thereon and extending through the lid, shaft 8 and impeller 1, with means to connect to an external drive motor through aperture 4E on one end, and a blending element at the other end (figure 1); a rim with a circumferential slot for fitting of the lid 2 onto the open end of the container 3, into which the top end 3C of the container 3 is located when lid and container are assembled (figures 1-3); where an outwardly convex portion 4 is formed on the lid within the rim portion (figures 1 and 2), which includes an access opening as discussed relative to claims 43, 44, 56, and 57 below and an opening through which the blending means extends. McGill does not teach that a radially inner side of the slot should extend along an inner wall of the container and be in contact with or closely adjacent to the inner wall when the lid and container are assembled. However, Hochstein et al teach a blending apparatus for a high speed blending operation comprising a container base 12 and a container lid 20, the container lid having mounted thereon blending means 26-38 arranged for a high speed rotation, the blending means extending through the lid and having, at one end, means 30 for connection to a drive motor external to the container and, at the other end, a blending element 38 for blending contents of the container when the drive means is operated, the

blending means comprising a shaft portion 26 locatable through an opening in the lid and incorporating the connection means, and a blending element portion 38 associated with the shaft portion for rotation therewith, the container lid comprising a rim portion 22 defining a circumferential slot into which the top edge 18 of the container is located when the lid and container are assembled, a radially inner side of the slot extending along an inner wall of the container and in contact with or closely adjacent the inner wall when the lid and container are assembled, and wherein an outwardly convex portion 34-36 is formed on the lid within the rim portion, the convex portion including the opening into which the blending means is located (figures 1 and 2). It would have been obvious to one of ordinary skill in the art to provide the slot of McGill with the inner portion of Hochstein et al: the motivation would have been to better seal or hermetically seal the cover to the container (Hochstein et al 2:28-29).

43. With regard to claims 27 and 28, McGill teaches an outwardly convex portion projecting above the upper end of the container as defined by the plane of the container's rim; and parallel to the same plane defined by the container's upper end, and hence level with it.

44. With regard to claim 31, McGill teaches that his container lids assembled with their blending means may be stackable or nestable with other lids (P64).

45. With regard to claims 35 and 36, McGill teaches a support 46 for an assembled container and lid (figures 11-14, P87ff) having a clamping member 50, moveable to engage the end of the container and locate the assembly during operation, with a clamping surface (the undersurface and unlabelled tip of 50) engageable with and

extending beyond the side edges of the container (figure 14), reciprocally movable and capable of applying a predetermined force to a container by a piston and cylinder device (P95), and having switch means for detecting an obstruction to a clamping action (P96). This support device is presented for in the context of an alternate embodiment of his invention where the blending means are disposed in the base of the blending container which has a separate lid. However, since it is clearly capable of performing the same functions with the upside-down containers of his first embodiment which have their blending members in their lids as with the right-side-up containers of his second embodiment with separate lids and blending elements, it would have been obvious to one of ordinary skill in the art to use the same support device with the blending containers of the first type. The motivation would have been to charge the container with product (P87).

46. With regard to claims 38 and 40, McGill describes blending means similar to those of his first embodiment (figures 1-4), comprised of a blending element portion 35 which is arranged with the shaft portion 8, by inserting first one through the hole in the base and then locking the shaft into the blending element (P100-P107).

- a. The pieces are clearly capable of being joined in the opposite order, inserting first the shaft through the hole, then snapping the blending element on to it (figures 15-18). The Courts have held that a statement of intended use in an apparatus claim fails to distinguish over a prior art apparatus. See *In re Sinex*, 309 F.2d 488, 492, 135 USPQ 302, 305 (CCPA 1962).

- b. Further, since the overall structure of the blending element, the shaft onto which it fits, and the hole through which it protrudes are substantially the same and perform the same function as the blending elements locatable in the lid in the first embodiment of McGill treated earlier, it would have been obvious to one of ordinary skill in the art to adopt the same details in manufacturing the blending assemblies meant to penetrate the lid of the container rather than its base. The motivation would have been to assemble a stirring element protruding through the lid of the container, rather than its base.
- c. Further, Hochstein et al teach a stirring element 38 attached to a shaft 26 protruding through the lid 20 of his container (figure 2), but does not disclose the means by which the element is fastened to the shaft. It would have been obvious to one of ordinary skill in the art to give the stirring element of McGill the blades of Hochstein et al, removed from the lid by some distance: the motivation would have been to optimize the blades for different products to be stirred (Hochstein et al 4:44-54); and to snap the blades on via the snap-fit taught by McGill: the motivation would have been to manufacture different blades for different products, and not also different shafts for different products.
47. With regard to claims 39 and 41, the blending element portion includes an opening 65 into which the shaft portion is locked and secured into place by shoulder means 62 (P106) and 66 (P103) (figures 16-18).
48. With regard to claims 43 and 44, McGill teaches a product access opening with closure means through which the contents of the container may be accessed after

blending (straw 5 in figure 1 and P45; or alternatively, opening 12 and cover 16 in figure 3), radially disposed upon the lid from its center (figures 1 and 3).

49. With regard to claims 45, 46, and 48, McGill teaches a container lid with a hole 12 and pocket 13 for holding product to be mixed with material in the container for blending material to be mixed with the product in the main body of the container; in particular, the material may be gas for carbonation (P50, figure 3).

50. Claims 29, 30, 50, and 53-55 are rejected under 35 U.S.C. 103(a) as being obvious over McGill [claims 50 and 53-55] or McGill in view of Hochstein et al [claims 29-30] in view of or further in view of US 2,858,861 to Appleton, who teaches a blender having a part-spherical (figures 1 and 3) and transparent (2:21-22) lid, where the lid defines an internal region in which blending means 64 operate, having curved surfaces (figure 3). It would have been obvious to one of ordinary skill in the art to make the curved outward portion of the lid of McGill and Hochstein et al transparent, as does Appleton: the motivation would have been to allow the container contents to be viewed; and to be part-spherical and curved, in order to be attractive (Appleton 1:37).

51. Claims 29, 50, 53, and 55 are rejected under 35 U.S.C. 103(a) as being obvious over McGill [claims 50, 53, 55] or McGill in view of Hochstein et al [claim 29], in view of or further in view of US 5,727,742 to Lawson, who teaches a blender with a blending element 25 surrounded by an internally semi-spherical surface, having a outwardly convex curvilinear dome shape, having curved surfaces, and containing the blending means 25 (figure 1). McGill, Hochstein et al, and Lawson are analogous arts because they are from the same problem-solving area, designing the local geometry of the

blending region around the impeller: in particular, because while the cup of McGill is held upside down and blending, the locally convex portion of the lid of McGill defines the space where the blending element operates. It would have been obvious to one of ordinary skill in the art to provide the curved spherical geometry to the outwardly convex portion holding the impeller of McGill and Hochstein et al; or alternatively, to provide the curved spherical geometry to the outwardly convex portion holding the impeller of McGill and Hochstein et al and make the impeller a separate piece from the convex surface, as does Lawson: the motivation would have been to facilitate recirculatory mixing (Lawson 1:35-37, 4:17-22).

52. Claims 30, 50, 54, and 55 are alternatively rejected under 35 U.S.C. 103(a) as being obvious over McGill [claims 50, 54, 55] or McGill in view of Hochstein et al [claim 30], in view of or further in view of Lee. Lee teaches a lid 30 having an outwardly convex portion and having curved internal surfaces (figures 1 and 2) which further may be transparent (1:38-40). Lee and McGill and Hochstein et al are analogous arts because they are from the same field of endeavor, machines for mixing food. It would have been obvious for one of ordinary skill in the art to make the lid of McGill transparent, as does Lee: the motivation would have been to allow the ingredients to be viewed (Lee 1:38-40); and to make the bowl a curved dome shape, for aesthetic purposes.

53. Claim 34 is alternatively rejected under 35 U.S.C. 103(a) as being obvious over McGill in view of Hochstein et al, and further in view of US 5,168,140 to Welker, who teaches a lid 114 for a beverage container 112 with a rim 148 defining a circumferential

slot 170 having a curvilinear joint, and an inner portion extending between two and twelve times the distance of the outer portion (figure 5; 4:17-39). McGill, Hochstein et al, and Welker are analogous arts because they are from the same problem-solving area, forming closeable lids for beverage containers which will seal tightly. It would have been obvious to one of ordinary skill in the art to provide the lid of McGill and Hochstein et al with the longer inward lip of Welker: the motivation would have been to better make a resilient snap-fit (4:31), so that the container might be made resealable.

54. Claim 37 is rejected under 35 U.S.C. 103(a) as being obvious over McGill in view of Hochstein et al, and further in view of US 4,108,054 to Klöcker et al.

a. McGill teaches a clamping member, which in an alternate embodiment to the machine press type treated with regard to claims 35 and 36 operates by a clamping member 47, rotatorily connected to fixed support member 46 and moveable to engage the top end of the container and so clamp it in place, and which may have switch means for detecting an obstruction to a clamping action (P87-P91, P96). McGill does not appear to explicitly disclose that the mechanism for this safety switch might be springs.

b. However, Klöcker et al disclose a safety interlock device for a beverage blending machine, having a clamping member 36, rotatorily connected to fixed support member 1 and moveable to engage the top end of the container 8 and so clamp it in place, and which has safety switch means preventing movement upon an obstruction to clamping action (4:25-33). The pivots to this clamping

apparatus and mechanical safety switch operate through springs (4:6-21, figures 1 and 2).

c. McGill and Klöcker et al are analogous art because they come from the same problem-solving area, that of providing safety switches for clamps supporting beverage blenders. At the time the invention was made, it would have been obvious to one of ordinary skill in the art to provide springs such as those of Klöcker et al for the mechanical safety switch mechanism of McGill. The motivation would have been to provide some small resistance to clamping, so that the arm could not clamp shut automatically without human intervention and a good connection. Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

55. Claims 42 and 71 are rejected under 35 U.S.C. 103(a) as being obvious over McGill [claim 71] or McGill in view of Hochstein et al [claim 42] in view of or further in view of US 2,068,858 to Dunkelberger, and further in view of US 3,135,111 to Roe. McGill teaches a blending apparatus and a container lid 2 for mounting on an open ended beverage container 3, the container lid having mounted thereon blending means 1-8 for a high speed blending operation, the blending means including a shaft portion 8 extending through the lid and having, at one end, means for connection to a drive motor external to the container and, at the other end, a blending element 1 for high speed blending of contents of the container when the drive means is operated (figures 1-3). McGill also teaches in an alternate embodiment, where the blending means is mounted

through the floor of the blending container, lubrication means to permit the contents of the container, during blending, to contact and lubricate the co-operating surfaces of the shaft portion and the opening in the lid (P107). It would have been obvious to one of ordinary skill in the art to apply the lubrication means taught by McGill in a second embodiment to the blending means of the first, where the shaft is mounted through the lid of the container: the motivation would have been to lubricate the shaft. McGill does not teach that the container contents may be admitted to act as lubrication, nor that they might enter through longitudinal slots in the side walls of the opening. However, Dunkelberger teaches a liquid blender having blending means 16 mounted through a collar 11, which has holes 13 through which blended liquid may flow in order to lubricate the bearing upon which its shaft turns (1:35-45, first column; figure 1). It would have been obvious to provide liquid ports such as those of Dunkelberger to the sleeve of McGill to allow blended liquids to access the rotating shaft: the motivation would have been to allow the liquids being blended to act as lubricant for the shaft (Dunkelberger 1:35-45, first column). Further, Roe teaches as desirable means for lubricating a spinning shaft comprising longitudinal slots 60 in the sleeves 55 which carry rotating shafts, through which lubricant may flow (figure 3, 5:18-23). It would have been obvious to give the liquid access means of Dunkelberger the slot-like configuration of Roe, such longitudinal channels being adapted to deliver lubricant to a spinning shaft: the motivation would have been to supply lubricating fluid in large quantities, and most efficiently lubricate the moving parts (Roe 3:43-61).

56. Claims 42 and 71 are alternatively rejected under 35 U.S.C. 103(a) as being obvious over McGill [claim 71] or McGill in view of Hochstein et al [claim 42] in view of or further in view of WO 03/002241 A1 by Colding-Kristensen et al. McGill teaches a blending apparatus and a container lid 2 for mounting on an open ended beverage container 3, the container lid having mounted thereon blending means 1-8 for a high speed blending operation, the blending means including a shaft portion 8 extending through the lid and having, at one end, means for connection to a drive motor external to the container and, at the other end, a blending element 1 for high speed blending of contents of the container when the drive means is operated (figures 1-3). McGill also teaches in an alternate embodiment, where the blending means is mounted through the floor of the blending container, lubrication means to permit the contents of the container, during blending, to contact and lubricate the co-operating surfaces of the shaft portion and the opening in the lid (P107). It would have been obvious to one of ordinary skill in the art to apply the lubrication means taught by McGill in a second embodiment to the blending means of the first, where the shaft is mounted through the lid of the container: the motivation would have been to lubricate the shaft. McGill does not teach that the container contents may be admitted to act as lubrication, nor that they might enter through longitudinal slots in the side walls of the opening. However, Colding-Kristensen et al teach a blending apparatus with rotating blades, the shaft of which has a sleeve 3, which sleeve has longitudinal slots 4 which are capable of admitting the container contents and hence lubricate the shaft (figure 1). It would have been obvious to one of ordinary skill in the art to provide the sleeve with longitudinal slots of Colding-Kristensen

et al to the blender of McGill: the motivation would have been to better homogenize the container contents (Colding-Kristensen et al 3:3-24). Note that it has been held that apparatus claims must be structurally distinguishable from the prior art in terms of structure, not function. See *In re Danley*, 120 USPQ 528, 531 (CCPA 1959); and *Hewlett-Packard Co. v. Bausch and Lomb, Inc.*, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990).

57. Claims 42 and 71 are alternatively rejected under 35 U.S.C. 103(a) as being obvious over McGill [claim 71] or McGill in view of Hochstein et al [claim 42] in view of or further in view of Lawson, who teaches a sleeve 20 or alternatively 46 for a blending element 25 or alternatively 60 (figures 1 and 2 respectively) which, similar to that taught by Colding-Kristensen et al, has a longitudinal slot 22 or alternatively 61 which are capable of admitting the container contents and hence lubricate the shaft (figure 1). It would have been obvious to one of ordinary skill in the art to provide the sleeve with longitudinal slots of Lawson to the blender of McGill: the motivation would have been to allow recirculatory mixing of the container contents (Lawson 3:41-45).

58. Claim 58 is rejected under 35 U.S.C. 103(a) as being obvious over McGill in view of US 3,085,281 to Massman. Massman and McGill are analogous arts because they are from the same problem-solving area, providing access lids to portable fluid mixing devices. Massman teaches a container lid 32 having slits extending in a generally radial direction. It would have been obvious to one of ordinary skill in the art, providing a lid to any container which is meant to be opened by a human being such as that of McGill, to provide radial slits such as those of Massman: the motivation would have

been to make the lid a cap which could be unscrewed, and allow the fingers to easily grip and unscrew it.

59. Claims 25, 26, 28, 32, 33, 43, 45-47, 49, 50, 52, 53, and 55-57 are rejected under 35 U.S.C. 103(a) as being obvious over US 6,363,837 B1 to Sham et al.

60. With regard to claims 25, 32, 33, 43, and 44, Sham et al teach a blending apparatus for high speed blending with a base 108-110, a lid 4-12-52 defining an internal region having curved surfaces in which the blending means operates, blending means 94 comprised of a shaft 96 and a blending element 98, a rim with a circumferential slot 56, and an outwardly convex portion 4 formed on the lid, and including the opening 75 through which the blending means descends, and a radially displaced product access opening, spout 106 (figures 2-5), with closure means (5:46-52). The circumferential slot at which the top end of the container 104 is located is defined by oppositely directed circumferential portions, the first portion, lower rim of part 52 (figure 4), closely adjacent to the inner side wall of container 104, and which in its curvilinear (circumferentially) join with inner portion 56 extends into the container (figure 4). Note that the speed at which the apparatus is operated does not distinguish structural features which are what are pertinent to an apparatus claim: the speed of operation is a statement of intended use. It has been held that the manner of operating an apparatus does not differentiate an apparatus claim from the prior art, if the prior art apparatus teaches all of the structural limitations of the claim. See *Ex Parte Masham*, 2 USPQ2d 1647 (BPAI 1987).

61. Sham et al in the embodiments of figures 2-5 further teach connection means to drive motor 68, but rather than make it external to the container incorporate it into the lid itself (figure 5). However, in an alternate embodiment, Sham et al incorporate the drive motor in a separate portion to which the container is attached, having means 75a to connect at the bottom end of the container the blending element 98a locatable at the upper end of the container to the external drive motor 68a (figure 9). It would have been obvious to one having ordinary skill in the art at the time the invention was made to locate the drive motor of Sham et al's first embodiment in a detachable base part, as in his second embodiment: the motivation to do so would have been to make the juicer pitcher portion less top-heavy, and hence easier to pour. Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

62. With regard to claims 49 and 55-57, Sham et al teach a container lid 4-12-52 for mounting on an open ended beverage container (figure 4); having blending means 94-100-78 for a high speed blending operation extending through an opening of the lid, and comprising blending element 98 for high speed blending of the contents of the container when the drive means is operated; the lid including an outwardly convex portion 4 having curved surfaces in which the blending means operates and including the opening for the blending means, and a radially displaced product access opening, spout 106 (figures 2-5), with closure means (5:46-52); and a rim portion 56 (figure 4).

63. Sham et al in the embodiments of figures 2-5 further teach connection means to drive motor 68, but rather than make it external to the container incorporate it into the lid

itself (figure 5). However, in an alternate embodiment, Sham et al incorporate the drive motor in a separate portion to which the container is attached, having means 75a to connect at the bottom end of the container the blending element 98a locatable at the upper end of the container to the external drive motor 68a (figure 9). It would have been obvious to one having ordinary skill in the art at the time the invention was made to locate the drive motor of Sham et al's first embodiment in a detachable base part, as in his second embodiment: the motivation to do so would have been to make the juicer pitcher portion less top-heavy, and hence easier to pour. Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

64. With regard to claims 26, 28, 50, 52, and 53, Sham et al further provide an outwardly convex portion 4 that is a curvilinear since semi-spherical dome shape, with blending means located centrally thereof (part 78 of the blending means, figure 5), and projecting above the rim of the container (figure 3).

65. With regard to claims 43 and 56, Sham et al further provide a product access opening with closure means for accessing the contents of the container after blending (5:46-51).

66. With regard to claims 45-47, Sham et al further provide means 44 and 28 for holding product to be mixed with the material, sliced fruit to be juiced (figure 4), formed as a pocket under dome 4 which may be opened to place the fruit inside, and a mesh or screen (4:11-15) for permitting communication from the material in the container 104 to encounter the fruit in the pocket when the pitcher is tipped (figure 4).

67. Claim 47 is alternately rejected under 35 U.S.C. 103(a) as being obvious over McGill in view of Hochstein et al, and further in view of Sham et al. McGill teaches a pocket internal to the container for holding an additional product, but does not teach mesh to allow material in the container to enter the pocket. However, Sham et al teach mesh which may permit fluid communication between the material in the container 104 and the fruit in the pocket (figure 4; 4:11-15). McGill, Hochstein et al, and Sham et al are analogous art because they are from the same problem-solving area, mixing two kinds of materials within a single blender. It would have been obvious to provide the mesh of Sham et al to the pocket of McGill: the motivation would have been to allow fluids from the pocket to enter the main compartment of the blender (Sham et al 1:54-58).

Conclusion

68. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

69. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew Janca whose telephone number is (571) 270-5550. The examiner can normally be reached on M-Th 8-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walter Griffin can be reached on (571) 272-1447. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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AJJ

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